

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3       MICHAEL C. STERNBERG, et al.,

4                   Plaintiffs

5       v.

6       SHELLEY WARNECK, et al.,

7                   Defendants

Case No.: 2:23-cv-01466-APG-EJY

**Order Granting Defendant Brenot's  
Motion to Dismiss**

[ECF No. 120]

8           Plaintiff Michael Sternberg sues seventy-five individuals and entities regarding events  
9 arising out of a custody dispute with the mother of his children, defendant Shelley Warneck. In  
10 this order, I address the motion to dismiss filed by one of his former attorneys in the California  
11 custody case, Michelle Brenot. Brenot moves to dismiss, arguing that this court lacks personal  
12 jurisdiction over her. She also contends that she is not a state actor, so Sternberg cannot state a  
13 claim against her under 42 U.S.C. § 1983.

14          Sternberg responds that he does not have any information about whether general  
15 jurisdiction exists in this court over Brenot. As for specific jurisdiction, he argues that he alleged  
16 that Brenot remotely appeared in a Nevada court proceeding and announced on the record during  
17 that proceeding that she represented him when he did not consent to that representation. He  
18 contends that he also has alleged she did nothing to prevent a California judge and a California  
19 attorney from violating his rights and she did not report those individuals for those violations.  
20 He asserts that as a result of Brenot's actions, he was harmed in Nevada. As to her argument that  
21 he cannot bring a § 1983 claim against her because she is not a state actor, he argues that he  
22 adequately pleaded that she conspired with state actors, and he contends that is all that is he  
23

1 required to plead. He contends that he is also suing her under 42 U.S.C. § 1985, which does not  
2 require her to be a state actor to be liable.

3 Brenot replies that the first amended complaint (FAC) does not allege that she appeared  
4 in a Nevada courtroom. Rather, it alleges she attended the jurisdictional conference in a  
5 California court. She also contends that the FAC did not put her on notice that Sternberg was  
6 asserting a claim against her under § 1985.

7 The parties are familiar with the FAC's allegations, so I repeat them here only as  
8 necessary to resolve the motion to dismiss. I grant the motion to dismiss because this court lacks  
9 personal jurisdiction over Brenot.

## 10 I. ANALYSIS

11 “When a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff bears  
12 the burden of demonstrating that the court has jurisdiction over the defendant.” *Pebble Beach*  
13 *Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). If the motion to dismiss is based on written  
14 materials rather than an evidentiary hearing, I must determine whether the plaintiff's “pleadings  
15 and affidavits make a prima facie showing of personal jurisdiction.” *Schwarzenegger v. Fred*  
16 *Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (quotation omitted). In deciding whether  
17 the plaintiff has met his burden, I must accept as true the complaint's uncontroverted allegations.  
18 *Id.*

19 “The general rule is that personal jurisdiction over a defendant is proper if it is permitted  
20 by a long-arm statute and if the exercise of that jurisdiction does not violate federal due process.”  
21 *Pebble Beach Co.*, 453 F.3d at 1154. Nevada's long-arm statute permits the exercise of  
22 jurisdiction on any basis consistent with federal due process. Nev. Rev. Stat. § 14.065(1). Due  
23 process requires that to exercise personal jurisdiction over a defendant, the defendant must “have

1 certain minimum contacts with the forum state such that the maintenance of the suit does not  
2 offend traditional notions of fair play and substantial justice.” *Ranza v. Nike, Inc.*, 793 F.3d 1059,  
3 1068 (9th Cir. 2015) (quotation omitted). Personal jurisdiction over a defendant may be based  
4 on general or specific jurisdiction. *Id.*

#### 5 **A. General Personal Jurisdiction**

6 If a court has general jurisdiction over a defendant, then the plaintiff may bring any claim  
7 he has against that defendant regardless of whether the claim relates to the defendant’s activities  
8 in the forum state. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358 (2021).

9 “Because the assertion of judicial authority over a defendant is much broader in the case of  
10 general jurisdiction than specific jurisdiction, a plaintiff invoking general jurisdiction must meet  
11 an exacting standard for the minimum contacts required.” *Ranza*, 793 F.3d at 1069 (quotation  
12 omitted). “A court may assert general jurisdiction over defendants when their affiliations with  
13 the State are so continuous and systematic as to render them essentially at home in the forum  
14 State.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (quotation  
15 omitted). “For an individual, the paradigm forum for the exercise of general jurisdiction is the  
16 individual’s domicile.” *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). Although these are  
17 not necessarily the only means for a defendant to be subject to general jurisdiction, the  
18 defendant’s contacts with the forum must be “so substantial and of such a nature as to justify suit  
19 on causes of action arising from dealings entirely distinct from those activities.” *Id.* at 137-38  
20 (simplified).

21 Brenot argues there is no general jurisdiction over her in Nevada because Sternberg has  
22 not alleged facts showing she had continuous and systematic contacts with Nevada such that she  
23 may be deemed to be present here. She has provided a declaration in which she states that she

has always been a California resident, she pays taxes only in California, is licensed only in California, and does not advertise for business anywhere except California. ECF No. 127. Sternberg does not refute these statements or suggest that he has any grounds to do so. To the contrary, he lists Brenot at a California address. ECF No. 86-2 at 2. Consequently, there is no basis to exercise general jurisdiction over Brenot.

### **B. Specific Personal Jurisdiction**

The Ninth Circuit has established a three-prong test for analyzing a claim of specific personal jurisdiction:

- (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
- (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and
- (3) the exercise of jurisdiction must comport with fair play and substantial justice, *i.e.* it must be reasonable.

*Schwarzenegger*, 374 F.3d at 802 (quotation omitted). “The plaintiff bears the burden of satisfying the first two prongs of the test.” *Id.* If he succeeds, then the defendant must “present a compelling case that the exercise of jurisdiction would not be reasonable.” *Id.* (quotation omitted).

Under the first prong, “to be subject to specific jurisdiction the defendant must purposefully direct its activities toward the forum state, purposefully avail itself of the privileges of conducting activities there, or engage in some combination thereof.” *Impossible Foods Inc. v. Impossible X LLC*, 80 F.4th 1079, 1088 (9th Cir. 2023) (quotation omitted). When the claims at issue are torts and the defendant's conduct “primarily occurs outside the forum state, [I] generally apply the purposeful direction test and look to whether the defendant expressly aimed

1 acts at the forum state knowing that they would harm the plaintiff there.” *Id.* To purposefully  
2 direct conduct at the forum state, “the defendant must have allegedly (1) committed an  
3 intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows  
4 is likely to be suffered in the forum state.” *Davis v. Cranfield Aerospace Sols., Ltd.*, 71 F.4th  
5 1154, 1162-63 (9th Cir. 2023) (quotation omitted). The defendant’s act may be directed at  
6 Nevada “even if it occurred elsewhere.” *Id.* at 1163. In contrast, a defendant purposefully avails  
7 herself of the forum state when she “purposefully avails [herself] of the privilege of conducting  
8 activities within the forum State, thus invoking the benefits and protections of its laws, and in  
9 return submits to the burdens of litigation in the State.” *Id.* (simplified). Because Sternberg’s  
10 claims are torts and Brenot’s alleged conduct took place in California, the purposeful direction  
11 test is more applicable, but I consider both tests.

12 In analyzing specific jurisdiction, I “focus[] on the relationship among the defendant, the  
13 forum, and the litigation.” *Walden v. Fiore*, 571 U.S. 277, 283-84 (2014) (simplified). That  
14 “relationship must arise out of contacts that the defendant himself creates with the forum State.”  
15 *Id.* at 284 (simplified). It cannot be based on the “random, fortuitous, or attenuated contacts” the  
16 defendant “makes by interacting with other persons affiliated with the State,” or on the plaintiff’s  
17 “unilateral activity.” *Id.* at 286 (simplified). The “defendant’s suit-related conduct must create a  
18 substantial connection with the forum State.” *Id.* at 284. Thus, the “analysis looks to the  
19 defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who  
20 reside there.” *Id.* at 285.

21 According to the FAC, Sternberg retained Brenot to represent him in the California  
22 custody case in 2012. ECF No. 86-3 at 1. Sternberg alleges that he believed that case was  
23 dismissed in 2013. *Id.* at 2. When Warneck’s attorney advised Sternberg that Warneck was

1 resurrecting the case, Sternberg filed a custody suit in Nevada. *Id.* at 3. Warneck defended the  
2 Nevada case in part by claiming that the California court had exclusive continuing jurisdiction  
3 based on the 2012 case. *Id.* at 3-4. The Nevada court thus decided to hold a jurisdictional  
4 conference with the California court to determine which court would exercise jurisdiction over  
5 the custody dispute. *Id.* at 4. According to the FAC, “Brenot attended the jurisdictional  
6 conference in . . . Santa Clara County, CA.” *Id.* Sternberg alleges that Brenot did not have his  
7 consent to represent him. *Id.* Based on these facts, Sternberg alleges that “Brenot knowingly  
8 assisted [the California judge] in violating [his] rights” by appearing on his behalf without his  
9 consent, by doing “nothing to try to stop” the California judge and Warneck’s California  
10 attorney, and by “fail[ing] to report them.” ECF No. 86-4 at 3.

11 Sternberg has not alleged facts supporting a prima facie case that Brenot purposefully  
12 directed her actions at Nevada or purposefully availed herself of Nevada’s benefits and  
13 protections. First, he has no allegations that she purposefully availed herself of Nevada, and her  
14 declaration refutes that she has. Entering into a contract with a forum resident like Sternberg is  
15 insufficient to constitute purposeful availment under these circumstances. The contractual  
16 relationship was centered in California because Sternberg hired Brenot to represent him in a  
17 California case. There is no allegation Brenot sought Sternberg out in Nevada, benefitted from  
18 his Nevada residence, or represented him in Nevada. Communications with him about his  
19 California case or billing him for that representation do not suffice. *See Davis*, 71 F.4th at 1163.

20 As for purposeful direction, the FAC alleges that Brenot purported to represent Sternberg  
21 in a California courtroom when she did not have his permission to do so, that she aided a  
22 California judge and attorney in violating Sternberg’s rights by doing nothing to stop them, and  
23 then did not report them. Looking at Brenot’s alleged contacts with Nevada, and not merely her

1 contacts with Sternberg who resides in Nevada, her appearance at one hearing in a California  
2 courtroom during which she allegedly did nothing to stop a California judge and California  
3 attorney from violating Sternberg's rights does not create a substantial connection with Nevada.  
4 The FAC does not identify to whom Brenot should have reported the judge and attorney, but  
5 because they are a California judge and attorney, any report would presumably be to some  
6 authority in California, not Nevada. Brenot's contacts with Nevada are too insubstantial to  
7 support personal jurisdiction.

### 8 C. Jurisdictional Discovery

9 Sternberg requests jurisdictional discovery if I am inclined to grant the motion to dismiss.  
10 However, he offers no basis for suspecting that amendment or jurisdictional discovery would  
11 change the outcome. *See Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008) (stating that  
12 a plaintiff seeking jurisdictional discovery must provide some basis to believe that discovery will  
13 lead to relevant evidence). I therefore deny the request for jurisdictional discovery. I dismiss  
14 Sternberg's claims against Brenot for lack of personal jurisdiction and without prejudice to him  
15 pursuing his claims in California or some other appropriate forum.

### 16 II. CONCLUSION

17 I THEREFORE ORDER that defendant Michelle Brenot's motion to dismiss (**ECF No.**  
18 **120**) is **GRANTED**. Plaintiff Michael Sternberg's claims against defendant Michelle Brenot are  
19 dismissed for lack personal jurisdiction.

20 DATED this 3rd day of July, 2024.

21   
22 ANDREW P. GORDON  
23 UNITED STATES DISTRICT JUDGE